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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. BANKERS INSURANCE COMPANY, Defendant and Appellant.	A133819 (City & County of San Francisco Super. Ct. No. CPF11-511665)

INTRODUCTION

Bankers Insurance Company (Surety), acting through Mack's Bail Bonds, issued a bond of $25,000 for the appearance of defendant Karina Pena, despite a hold on Pena by the United States Immigration and Customs Enforcement (ICE). The court ordered the bond forfeited when Pena failed to appear. Surety appeals from orders of October 17 and October 20, 2011, denying its bail agent's motion to vacate forfeiture and granting the People summary judgment. (Pen. Code, §§ 1305, subd. (j), 1306, subd. (a).)[1] Surety

[1] Unless identified otherwise in this opinion, all dates are in 2011 and all section references are to the Penal Code.

An order denying a motion to vacate forfeiture is appealable (*People v. Wilcox* (1960) 53 Cal.2d 651, 654–655), as is a voidable, erroneous order for summary judgment (*People v. American Contractors Indemnity Co*. (2004) 33 Cal.4th 653, 661 (*American Contractors*).) Surety's notice of appeal purports to appeal from an order of November 3, denying reconsideration of its motion to vacate forfeiture, but Surety concedes in briefing that, as in other areas of the law, a denial of reconsideration is not separately appealable from the order sought to be reconsidered. (See generally *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1050.)

seeks reversal, arguing that deportation of Pena rendered performance impossible and that summary judgment was void because it was entered prematurely. We reject both arguments and affirm.

BACKGROUND

The defendant, Karina Pena, was arrested on January 26, rebooked on January 27, and appeared for her arraignment on January 28. Mack's Bail Bonds posted bail in the amount of $25,000 on January 28. The bail receipt the San Francisco Sheriff's Department gave to Mack's on January 28, states: "The custody has an active ICE hold as of 1/28/11 2036 hrs. Cannot be released until hold has been removed from ICE."

On February 10, Pena failed to appear in court as ordered for her preliminary hearing and the court issued a bench warrant and ordered bail forfeited. At that time the court observed "it's my understanding that the Pena Family posted bail but then she had an [ICE] hold on her; so therefore, that explains why she is not here."

On August 26, the last day for the bail agent to move for relief from the bail forfeiture, bail agent MacKenzie Green, in propria persona, filed a motion to vacate the forfeiture or in the alternative to toll time, seeking relief under sections 1305, subdivisions (d) and (e). The bail agent argued that an ICE hold on Pena made it impossible for the bail agent to compel her appearance in court and that the bail bond was void because the ICE hold prevented the bail agent from taking custody of Pena. In the alternative, the bail agent argued that Pena was temporarily unable to appear in court and asked the court to toll the time for seeking relief from forfeiture "for further documentation of the defendant's deportation and inability to legally return to the United States."

At the October 17, hearing on the motion to vacate forfeiture, bail agent Green argued that the state had deported Pena and that Surety was entitled to have the bail bond exonerated. In support of this motion, the bail agent submitted: (1) the bail bond, (2) the

bail receipt from the sheriff, noting the ICE hold, (3) the court clerk's notice of forfeiture, and (4) a computer printout that the bail agent referred to as the "docket sheet."

In its papers and at the hearing, the bail agent argued that the "docket sheet . . . provides an Alien Number of 012611" as proof that Pena had been deported. (This number was not an "alien number," but the date Pena was arrested, as the docket sheet reads on the same line "ARR 012611" and "REBOOK 012711.") In any event, as the court pointed out, such number did not provide evidence that Pena was deported. The bail agent admitted that the exhibits she had provided did not contain the "A number." The district attorney disputed the adequacy of the evidence that Pena had been deported, arguing that an ICE hold did not mean that Pena would be deported, as ICE holds may be lifted, so as to justify posting bail. The court found there was no evidence before it that Pena had been deported.

In arguing that Pena had been deported, the bail agent somewhat confusingly admitted that "[W]e post a bail sometimes for people who are not here legally and they're released from jail and then they're deported and we file motions and we're exonerated, so it really doesn't matter to me whether she's walked outside on the sidewalk or she is released to immigration." Further, according to the bail agent, "[Y]ou post the bail and they take them to immigration, but then at immigration they have a right to post an immigration bond, which they do so, and while they're waiting on immigration status they come out and they go to court. [¶] In this particular case the state elected to deport her, which I have no control over, so it doesn't matter to me whether she's on the sidewalk or whether they decide at immigration that they are not going to let her bail out of immigration. She's still deported by the state."

The trial court found that the bail agent failed to provide sufficient evidence that Pena was deported, stating it could "only rule on what's before me." The court agreed that the mere fact there was an ICE hold did not mean the person would be deported and that ICE holds can be lifted. It concluded that there was no evidence before it of a

permanent disability under section 1305, subdivision (d) or of a temporary disability under section 1305, subdivision (e), so as to warrant vacating the forfeiture and dismissing the bail.

In ruling on the bail agent's request to toll the time, the court rejected the bail agent's assertion that the docket was "missing information" and that the bail agent needed more time to bring the missing information to the court's attention. According to the court, the court docket was not missing any information and the court had confirmed at the outset of the proceedings that it had everything the parties had filed before it. The court further observed that the bail agent had more than a month following the filing of the district attorney's opposition (and two previous court appearances in the interim) to identify the issues regarding the lack of evidence of deportation and that there had been more than adequate opportunity for Surety to supply any additional evidence. The court denied the bail agent's motion to vacate the forfeiture or, in the alternative, to toll time.

On October 20, summary judgment was entered for the People against Surety on the order forfeiting the bail.

Also on October 20, Surety, now represented by counsel, filed a motion for reconsideration purportedly pursuant to Code of Civil Procedure section 128, subdivision (a)(8), asking the court to reconsider its denial of the motion to vacate the forfeiture and exonerate bail. The only additional evidence presented on that motion was a declaration from Surety's attorney, John Lee, stating: (1) he had received notice from the San Francisco Sheriff's Department that Karina Pena was "transferred into the custody of ICE agents on 1/31/2011" (and attaching a copy of the faxed notice); (2) Lee called the Office of Homeland Security and entered the alien number contained on that form for Pena, A076391389, and that number coincided with an individual named Padilla Paz Minerza Linuria, who had been ordered removed on March 20, 1998, by a

judge in Los Angeles[2]; and (3) his call to the local ICE field office elicited no information about the current status of the person with that alien number and the officer with whom Lee spoke suggested Lee obtain a court order to obtain the release any information.

On November 3, at the hearing on this motion to reconsider, attorney Lee candidly acknowledged that "[w]e don't know if she's been deported or not, frankly." Counsel argued for more time to subpoena records to find out what happened to Pena and whether she was in INS custody.

The court denied the motion on alternative grounds: The court found the motion to reconsider was not supported by any proper authority and found Code of Civil Procedure section 128, subdivision (a), did not provide a basis for reconsideration. The court further found that when defendant failed to appear, Surety or the bail agent should have tried to get the information and bring it to the court's attention and should have sought a remedy from the court at that time. According to the court: "All we know is that on January 31 she was transferred to ICE. But where she was on February 10, when she was supposed to be in my prelim? We don't know. For all we know, she was released by ICE." Had the reconsideration motion been properly made, the court would still have denied it, "because to this day I don't have any evidence as to where Ms. Pena was on February 10 or where Ms. Pena was on the day—on the 185th day [after forfeiture of bail], which was August 26[, the day the surety moved for relief from forfeiture]. We don't know. And now—is it eight months later? We still don't know. [¶] So [the bail agent] had more than ample opportunity to fulfill her obligations in accepting a premium and posting bail for this person. She has done nothing that I can tell except obtain a $2,500 premium and do nothing in terms of her responsibilities to this Court." The court continued, "I think it's important that [the bail agent] understand that when she takes bail

[2] Lee did not represent that Pena and Linuria were the same person or that Pena was deported.

from someone who has an ICE hold, she's already on notice that these are the kinds of problems that could occur, and she has a responsibility to be able to obtain, either directly from the defendant or a family member or from ICE, information about the status of that person so she can provide that information to the Court. And had she done those things, I would have been in a position to give her the remedy and the relief that she's seeking. But she hasn't, and therefore, I can't.

This timely appeal was filed by Surety on November 21.

DISCUSSION

I. Deportation Showing

A. *Standard of Review*

" ' "The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court." ' (*People v. American Contractors Indemnity Co*. [(2004)] 33 Cal.4th [653] 657, quoting *People v. Wilcox* (1960) 53 Cal.2d 651, 656–657.) 'A bail bond is in the nature of a contract between the government and the surety, in which the surety acts as a guarantor of the defendant's appearance under risk of forfeiture of the bond. [Citation.] "In general the state and surety agree that if the state will release the defendant from custody, the surety will undertake that the defendant will appear personally and at a specified time and place. . . . If the defendant fails to appear at the proper time and place, the surety becomes the absolute debtor of the state for the amount of the bond." [Citation.]' [Citations.]" (*People v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 146, 151 (*Fairmont*).)

The resolution of a motion to vacate or set aside a forfeiture and exonerate the bail "is within the trial court's discretion and should not be disturbed on appeal unless an abuse of discretion appears in the record." (*People v. Legion Ins. Co.* (2002) 102 Cal.App.4th 1192, 1195; accord, *Fairmont, supra,* 173 Cal.App.4th at p. 151.)

B. ***Section 1305, subdivisions (d) and (e)***

1. *Subdivision (d)*

"Section 1305 requires bail to be forfeited if the defendant fails to appear on '[a]ny . . . occasion prior to the pronouncement of judgment if [his or her] presence in court is lawfully required.' (*Id.*, subd. (a)(4).) The statute goes on to specify a number of situations in which the forfeiture must be vacated and the bond exonerated . . . ." (*Fairmont, supra*, 173 Cal.App.4th at pp. 151–152.) These include situations where the defendant is permanently or temporarily disabled due to "illness, insanity, or detention by military or civil authorities." (§ 1305, subds. (d) & (e).)

Section 1305, subdivision (d), provides for exoneration of bail in the case of a permanent disability preventing the defendant to appear in court, as follows:

"(d) In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice, if notice is required under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:

"(1) The defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities.

"(2) The absence of the defendant is without the connivance of the bail."

Section 1305, subdivision (e), provides for tolling of the 180 day period in case of temporary disability as follows:

"(e) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:

"(1) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.

"(2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.

"(3) The absence of the defendant is without the connivance of the bail.

"The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court."

"The provisions of section 1305 'must be strictly followed or the court acts without or in excess of its jurisdiction. [Citation.]' [Citation.] *'The burden is upon the bonding company seeking to set aside the forfeiture to establish by competent evidence that its case falls within the four corners of these statutory requirements.'* [Citations.]" (*Fairmont, supra*, 173 Cal.App.4th at p. 152, italics added.)

Surety relies upon *People v. American Surety Ins. Co.* (2000) 77 Cal.App.4th 1063 (*American Surety*), for its argument that Pena's deportation rendered Surety's performance on the bond impossible and qualified as a permanent disability requiring the court to vacate the forfeiture and exonerate the bond. In *American Surety*, there was no dispute that the defendant had been deported to Mexico on August 10, 1998, and therefore did not appear at his September preliminary hearing. (*Id.* at p. 1065.) The trial court denied the bail surety's motion to vacate forfeiture and exonerate the bail under section 1305, and the Court of Appeal reversed. The appellate court recognized that a "person may be 'detained' within the meaning of section 1305, subdivision (d), without being in the actual physical custody of civil authorities. 'It is sufficient under this section . . . if it is proven that the defendant was restrained by civil authorities and that the restraint prevents his appearance on the date set for that appearance. [Citation.]' [Citation.]" (*Id.* at p. 1065.) The *American Surety* court distinguished that case from cases in which the defendant voluntarily left the United States while on bail and after a deportation order was issued, but not yet enforced, where it was held the defendant voluntarily left and the bond was properly forfeited. (77 Cal.App.4th at p. 1066.) In contrast, the defendant in *American Surety* was "not only ordered to leave the country, he was physically escorted across the border by federal agents. Federal statutes prevent[ed] both his voluntary return, and his forced return by Surety. [Citation.]" (*Ibid.*) The bond agent could not be required to violate federal law to surrender the defendant. The

defendant was therefore considered "detained" by the United States government from appearing at his preliminary hearing. (*Id.* at pp. 1066–1067.)

American Surety, supra, 77 Cal.App.4th 1063, does not assist Surety as it was proven in that case that the defendant was deported, could not return to the United States, and that the bail agent could not retrieve the defendant and return him without running afoul of federal law. The question here is not whether deportation of the defendant would warrant application of section 1305, subdivision (d) or (e), but whether the court abused its discretion in finding insufficient evidence that Pena was still being held or actually had been deported at the time she was to appear.

There was no actual evidence as to Pena's whereabouts before the court at the time she failed to appear for her preliminary hearing on February 10. Pena's counsel advised the court that "I've just spoken to her husband, and I guess she's in immigration custody. She's not here today." Counsel's representation to the trial court *could have been* a sufficient basis on which to sustain a decision to reset and continue the preliminary hearing, had the court determined to do so. (See *People v. Ranger Ins. Co.* (1994) 31 Cal.App.4th 13, 20, fn. 8; *People v. Wilshire Ins. Co.* (1975) 53 Cal.App.3d 256, 261; *County of Los Angeles v. Surety Ins. Co.* (1985) 165 Cal.App.3d 948, 950–951 [Pen. Code, § 1305, in its present form, allows a court to defer declaration of a forfeiture upon a first nonappearance if it has reason to believe a valid excuse for nonappearance exists, and that the trial court's reference to such a belief at the first nonappearance satisfied the statute's requirements, preserving its jurisdiction to later declare a forfeiture.][3].)

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[3] "If a trial court, on a first nonappearance, suspects that some good excuse exists, the public interest—which prefers the appearance of a defendant rather than a monetary penalty—is best served by encouraging a bondsman to increase its own efforts to locate the defendant and produce him in court in order to avoid a forfeiture and not to induce the bondsman to feel that further effort by him would be materially unproductive." (*County of Los Angeles v. Surety Ins. Co., supra,* 165 Cal.App.3d at p. 950, fn. omitted.) The appellate court recognized in a footnote that "even after a forfeiture, a bondsman may secure relief by producing the defendant within a 180-day period. But that remedy is more costly and less certain than production of a defendant *before* a forfeiture. Production of the defendant during the period of the continuance does not require proof

However, the bail agent was not present and no one requested the court to toll the time period under section 1305, subdivision (e), at that time.

From the court's comments, it appeared the court accepted that Pena was subject to an ICE hold and was prepared to issue, but then stay, the bench warrant for her arrest for 15 days; however, upon being advised that there were time issues (§ 859b [right to a preliminary hearing within 10 days of defendant's plea absent a personal waiver or good cause established by the prosecution]; see *People v. Love* (2005) 132 Cal.App.4th 276, 283–286), the court proceeded to issue the arrest warrant and to order the bail forfeited. That the court *could* have determined it had reason to believe a sufficient excuse might exist for Pena's failure to appear, did not *require* the court to postpone its decision to declare a forfeiture at that time, particularly in view of the time constraints with which it was dealing. The court was not required to stay the bench warrant upon Pena's nonappearance, nor was it required to toll the time for its order declaring the bail forfeited. The court did not abuse its discretion in ordering the bail forfeited and in failing to toll time at that point.

At the hearing on Surety's motion to vacate forfeiture and exonerate the bond, held more than six months later, the Surety maintained that Pena had been *deported*, but presented little to no evidence of that asserted fact. The court acted within its discretion to determine that the evidence presented by bail agent (the bail bond, the bail receipt from the sheriff noting the ICE hold, the court clerk's notice of forfeiture, and a computer printout that the bail agent referred to as the "docket sheet") provided inadequate support for the court to find an excuse under section 1305, subdivision (d) or (e). As the court observed, the mere fact there was an ICE hold did not mean the person would be deported and ICE holds can be lifted. Indeed, as the attorney representing Surety candidly conceded at the later hearing on the motion for reconsideration, Surety did not know whether Pena had been deported.

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that the suspected excuse did exist—production is enough. But relief under the postforfeiture provision requires both production and proof of a valid excuse." (*Ibid.* at fn. 1.)

We reject Surety's assertion, made in its appellant's reply brief, that evidence of an ICE hold and the later evidence (not presented until the request for reconsideration) that she was transferred to ICE custody before the preliminary hearing shows Pena was "likely" deported. Our standard of review here is abuse of discretion. That discretion is not abused where substantial evidence supports the trial court's determination, as we believe it does here. We reject Surety's claim that the court "was bent on applying a standard of proof approximating proof beyond a reasonable doubt." On the evidence presented, the court could well determine that the Surety had not carried its burden of showing either the section 1305, subdivision (d) or subdivision (e) exception applied here.

In its appellant's opening brief, Surety does not contend that the court abused its discretion in denying the bail agent's alternative motion to toll time at the October 17 hearing on the motion to vacate *or* in denying the Surety's request to toll time at the November 3 reconsideration motion. Rather, in its reply brief, Surety argues that evidence not before the court on October 17—the sheriff's transfer notice, produced in connection with the reconsideration motion—"indisputably showed the defendant was turned over to federal authorities" and was in custody and detained by civil federal authorities "for deportation on January 31, 2011," and that it was incumbent on the trial court to toll the time to allow Surety the opportunity to provide proof Pena was detained or deported. Surety has waived any argument that the court erred in refusing to toll time, by failing to raise this claim in its appellant's opening brief. (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1477–1478; *SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 573, fn. 18; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (Rutter Group 2012) ¶ 9:78:2, p. 2-28 (Eisenberg et al., Civil Appeals and Writs) [points raised for the first time in a reply brief ordinarily will not be considered]; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 723, p. 790 ["Obvious considerations of fairness in argument demand that the appellant present all of his or her points in the opening brief."].) In any event, the court could well determine the evidence before it at both the October 17 hearing on the motion to vacate

the forfeiture and exonerate the bond and at the later reconsideration motion was insufficient toll the time.

Surety argues that the sheriff's failure to release Pena on the bail bond invalidated the surety bond, as it was without consideration. Surety has waved that claim by failing to raise it in the trial court. (Eisenberg et al., Civil Appeals and Writs, *supra*, at ¶¶ 1:44, p. 1-10.1, 8:229, pp. 8-155 to 8-156.) Nor is waiver prevented by Surety's argument, raised in a footnote to its reply brief, that this claim goes to the trial court's *jurisdiction*, and so may be raised at any time. Surety confuses the court's fundamental jurisdiction over the claim with actions in excess of the court's jurisdiction. (Cf. *American Contractors, supra*, 33 Cal.4th 653, 661.) The trial court had jurisdiction over the subject matter and the parties. The trial court here had jurisdiction to act on the motion. Moreover, were we to consider the issue, we would determine the same failure to provide sufficient competent evidence that Pena was retained in custody or had been deported undermines this claim.

II. Premature Summary Judgment

The law governing the time for entry of summary judgment is settled. Section 1305, subdivision (b), gives a surety or bail agent 180 days from the date of forfeiture to move to vacate the forfeiture and exonerate the bond, a so-called appearance period or exoneration period that extends to 185 days when notice of forfeiture is given by mail. (*American Contractors, supra*, 33 Cal.4th at p. 658; *People v. Granite State Insurance Co.* (2003) 114 Cal.App.4th 758, 762 (*Granite State*).) The court must order summary judgment "[w]hen any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside . . . ." (§ 1306, subd. (a).) The court has discretion to extend or toll the time (§ 1305.4), but if delay caused by the court results in summary judgment not being "entered within 90 days after the date upon which it may first be entered, the right do to so expires and the bail is exonerated." (§ 1306, subd. (c).) Read together, those provisions mean that, "where a surety timely files a motion to vacate forfeiture prior to the expiration of the exoneration period, and the motion is decided after expiration of that period as provided under

section 1305, [former] subdivision (i), the court's power to enter summary judgment begins on the day following denial of the motion and expires 90 days later." (*Granite State*, *supra*, 114 Cal.App.4th at p. 770.) Prematurely entered summary judgment is voidable, but not void. (*American Contractors*, *supra*, 33 Cal.4th at pp. 657, 665.)

Here, the court clerk mailed notice of forfeiture on February 22, and bail agent Green timely filed her motion to vacate forfeiture (or toll time) on the very last day of the 185-day exoneration period, August 26. The court twice continued the matter (see former § 1305, subd. (i), current § 1305, subd. (j) [motion may be heard within 30 days of expiration of the exoneration period, but court may extend the 30 days upon a showing of good cause]), heard and denied the motion on October 17, and entered summary judgment on October 20. Thus, summary judgment was ordered only *after* the exoneration period (not prematurely) and *before* the lapse of 90 days from the filing of the motion to vacate forfeiture (not late). Surety's opening brief offers no comprehensible explanation of how the summary judgment was premature. It states at one point: "[T]he premature judgment here was voided by appellant's timely attack, and the trial court, having failed to timely enter a valid judgment lost jurisdiction ever to do so and bail was exonerated by operation of statute." Then it states on its final page: "[T]he premature, voidable summary judgment was voided by the timely attack by appeal, and the trial court lost jurisdiction to enter a valid judgment when it failed to enter one within 90 days after the motion to vacate the forfeiture was denied." But neither statement explains how the summary judgment was "premature" or "voidable" in the first place, or how the taking of an appeal could render a timely judgment premature. The People are mystified, too, noting in their respondent's brief: "[N]owhere in its brief does [Surety] cite to any part of the record on appeal when arguing that the summary judgment was premature. Nor does [Surety] say why the summary judgment was premature."

In its reply brief, Surety finally offers this clearer, albeit flawed, reasoning: "[A] court has no jurisdiction to enter a summary judgment until the day ***after*** a motion for relief from forfeiture is denied. . . . In this case, the trial court had no jurisdiction to enter judgment until November 4 . . . , the day after it denied the motion for

reconsideration. Therefore, the judgment entered October 20 . . . , while the motion for reconsideration was pending, was premature and voidable." The primary flaw is that Surety would have us conflate, under the rubric of "motion for relief from forfeiture," a motion to vacate forfeiture, which the bail statutes implicitly specify will, if timely, extend the exoneration period (*Granite State, supra*, 114 Cal.App.4th at p. 770), and a *motion to reconsider* a ruling denying that relief, which the bail statutes do not mention at all.

Surety cites the civil law provision contained in Code of Civil Procedure section 1008, for reconsideration of orders generally, but we find no authority or reason to treat such a motion as tolling or extending further the exoneration period as defined in section 1305. Bail bond proceedings certainly are civil in nature (*American Contractors, supra*, 33 Cal.4th at p. 657), and we assume for sake of argument that Code of Civil Procedure section 1008, or an analogous inherent court power, does apply to permit reconsideration in bail bond proceedings (see *People v. Castello* (1998) 65 Cal.App.4th 1242, 1246–1250 [finding no express incorporation of the limitations of Code Civ. Proc., § 1008, into criminal cases, but finding inherent court power]). The unsupported leap for Surety is in its assumption that the statute superimposes on bail bond proceedings, by implication, a further extension of the exoneration period. As was reasoned in rejecting equitable tolling as a way to extend the exoneration period during a defendant's extradition: "Here, the Legislature has spoken to a particular basis for tolling but has elected to limit the extent of tolling available. . . . This indicates that the Legislature intended to omit other bases for tolling the 180-day appearance period. [Citation.] Thus, tolling the appearance period during the extradition process is inconsistent with the statutory scheme. [Citation.]" (*People v. Western Ins. Co.* (2012) 204 Cal.App.4th 1025, 1032.)

The exoneration period was not tolled or extended by the filing of Surety's motion for reconsideration. Entry of summary judgment before a ruling on that motion therefore was not premature.

DISPOSITION

The orders are affirmed.

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Kline, P.J.

We concur:

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Haerle, J.

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Lambden, J.